

produced by another suit being then depending in this Court between this plaintiff and the defendant Thomas Clagett. Upon which a commission was prayed, &c. Whereupon, it was ordered, that a commission issue as prayed, returnable to the first day of the then next July Term; reserving to the defendants the right to call for a final hearing during that term.

At July Term, 1830, the case standing ready for final hearing was opened and argued by a solicitor on the part of the plaintiff; when it was objected, on the part of the defendants, that there was no proof to sustain the allegations and exhibits of the bill, that certain notes for goods sold had been given by the defendant Thomas Clagett; or of the notes which had been lent by Salmon to Thomas Clagett. Whereupon, the plaintiff by his petition on oath, stated, that owing to an oversight and misapprehension of his solicitors, produced by their attention being called off to another cause then depending here between himself and Thomas Clagett, the testimony in relation to those notes then exhibited *with his petition had not been taken; and he therefore prayed that a commission might be issued for that purpose. **167**

BLAND, C., 21st July, 1830.—Ordered, that this case stand continued to the next term: and that the plaintiff have a commission to take testimony as prayed: Provided, that the testimony be taken, and the commission returned on or before the first day of September next. And it is further ordered, that all the costs and expense of the said commission and of executing the same be borne by the plaintiff.

After the commission thus granted had been returned, the plaintiff by his petition on oath, set forth, that the deposition of Charles Smithen, a witness competent and proper, had not been taken, by whom he expects to prove, that certain promissory notes given by the defendants, and also certain notes given by Thomas Clagett, one of the defendants, were given for goods, &c.; and also, that certain responsibilities were assumed and notes given by the plaintiff to the creditors of Thomas Clagett; that there were certain documents, in the City of Baltimore, which it was deemed important for the witness to prove; and that the petitioner had used all reasonable diligence to have the witness before the commissioners; but could not do so, because he had gone beyond the jurisdiction of this Court; and had only come again into this State, since the return of the commission. Upon which he prayed for a commission, &c. This petition was submitted on the part of the defendants with a mere denial of the plaintiff's right to a petition.